

APPEAL NO. 010869
FILED JUNE 12, 2001

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 27, 2001. With respect to the issues before him, the hearing officer determined that the appellant (claimant) did not sustain a compensable mental trauma injury on _____, and that she did not have disability within the meaning of the 1989 Act because she did not sustain a compensable injury. In her appeal, the claimant essentially argues that those determinations are against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant did not sustain a compensable mental trauma injury as a result of hearing a gunshot at work on _____, followed by a loud scream and then yelling that there was a bomb in the store. The question of whether the claimant sustained a mental trauma injury presented a question of fact for the hearing officer. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the fact finder, the hearing officer resolves the conflicts and inconsistencies in the evidence, and determines what facts have been established from the evidence. Garza v. Commercial Ins. Co., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ); St. Paul Fire & Marine Ins. Co. v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). The hearing officer was acting within his province as the fact finder in determining that the claimant failed to meet her burden of proof. His determination that the claimant did not sustain a compensable mental trauma injury is not so contrary to the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no basis exists for us to reverse the hearing officer's injury determination on appeal.

Given our affirmance of the hearing officer's determination that the claimant did not sustain a compensable injury, we likewise affirm his determination that the claimant did not have disability. By definition, in the absence of a compensable injury, there can be no disability. Section 401.011(16).

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Michael B. McShane
Appeals Judge